IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.477 OF 2004

Shri Vishnu Tukaram Kad & Anr. .. Appellants

Versus

Shri Jayprakash Ayodhyaprasad

Jaiswal and ors. .. Respondents

Mr.R.S.Apte with A.A.Garge for appellants

Mr.G.S.Godbole for respondents

WITH

SECOND APPEAL NO.483 OF 2004

Shri Shankar Govind Kad & Anr. .. Appellants

Versus

Shri Jayprakash Ayodhyaprasad

Jaiswal and Ors. .. Respondents

Mr.R.S.Apte with A.A.Garge for appellants

Mr.G.S.Godbole for respondents

CORAM : P.V.KAKADE, J.

DATE : 16TH JUNE, 2005.

P.C.:

1. Both these appeals are being disposed of as they involved common issues as well as the defendants are common and plaintiffs are related to each other involving the part of the same property.

2. The appellants in both the appeals have preferred appeals against the judgment and order passed by Addl. District Judge, Pune dated 2.12.2003 dismissing the appeal and confirming the order passed by Civil Judge, Junior Division, Rajgurunagar, Khed dismissing both the suits, which were for perpetual injunctions simplicitor.

3. The plaintiffs had filed the suits pertaining to agricultural land bearing Gat No.1049 and 1050 located at village Waki B.K. with a case that the land were their ancestral property and no partitions were effected

at all, therefore, the plaintiffs had 2/3rd undivided share therein. They claimed their joint possession over the suit land. The defendants had purchased part of the suit land from other co-sharers. In fact they had purchased only interest of the co-sharers in the suit land and the defendants were never put in actual possession of the suit land. It was further alleged that the defendants were stranger purchasers and therefore, could not be put in joint possession with other co-sharers. However, the defendants by joining hands with the revenue authorities got their names located in the revenue record and on that basis they were obstructing the possession of the plaintiffs over the suit property. Hence the suit for perpetual injunction was filed. The defendants contested the suit and denied the plaintiffs allegations and submitted that the partitions were already effected as back as on 1.12.1938 between the ancestors of the plaintiffs and accordingly mutation entries were effected at that time. The defendant no.2 in Second Appeal No.477 of 2004 had entered into an agreement in the year 1995 and sold the land of 12 acres 37 gunthas, which were allotted to his share and thus according to the defendants, he was estopped from taking such contentions. Under the

circumstances the suit was sought to be dismissed on such and other grounds.

4. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had failed to prove that they were exclusive possession of the suit property with other co-sharers and further failed to establish that contesting defendants had obstructed their possession and as such suit came to be dismissed. The appeal was carried to the District Court Pune. The learned Addl. District Judge after hearing both the parties confirmed the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

5. I heard the learned counsel for both the parties. Perused the record.

6. At the outset it may be noted that there is absolutely no substantial question of law involved in both the appeals. The evidence on record is sufficient to show that the partitions were effected as back as in the year 1938 amongst the ancestors of the plaintiffs and mutation entries 1136 and 1137 came to be made in

that regard. Those entries relate to the partitions amongst the brothers of Survey Nos.114 and 115 which were old Survey numbers of land bearing Gat Nos.1049 and 1050. Therefore, it is clear that the old mutation entries corroborate the case of the defendants about the previous partitions. It is also seen from the record that the participants in the partition of the year 1938 are no more and as such old mutation entries are the documents to support the theory of previous partitions. It is also to be noted that there is absolutely no evidence adduced by the plaintiff in rebuttal of the presumption of mutation entries. The appellate court judge has relied upon the ruling of Supreme Court in the case of Digambar vs. Deoram reported in AIR 1995 Supreme Court Cases which relate to the provisions of Section 35 of the Evidence Act, under which it is found that the said mutation entries are relevant for the purpose and in absence of any evidence in rebuttal, the presumption must be held in favour of the partitions. It is interesting to note that the defendants' witness Anil, who is grandson of Govind, has also stated about the previous partition in the course of his evidence. The learned appellate court judge has elaborately discussed the documentary as well as oral evidence on

record in order to hold that there were previous partitions. It is also found from the registered Sale Deed filed on record that the defendants had purchased the land allotted to share of the co-sharers on 16.10.1997 and they were put in possession. It is quite evident that they have proceeded with the construction on the said property and then the suit for injunction came to be filed. The learned counsel for the appellants submitted that the evidence of mere entry was not sufficient to hold that there were previous partitions. However, in the present case the documentary as well as oral evidence is found to be sufficient to raise such presumption in order to hold that there were previous partitions, especially there is absolutely no evidence led by the plaintiffs to rebut such presumption on record. After perusal of judgment of both the courts below it is found that they have concurrently recorded the findings holding that there were previous partitions and the defendants have purchased the part of the property from other co-sharers and are in possession. In my considered view, these concurrent findings cannot be disturbed for want of any cogent reason. Time and again the Apex Court has held that it is not within the domain of the High Court to

investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. In the present case before us the record shows that both the courts below have rightly concluded the issues involved, which are purely issues of facts and no substantial question of law is involved in that regard.

. In view of this position I am satisfied that the findings recorded by both the courts below would brook no interference in both the appeals and as such both the appeals deserves to be dismissed with no order as to costs and stands dismissed accordingly.

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